

and triphenylmethyltriphenylphosphonium chloride.

--

REMARKS

Applicants would like to thank the Examiner for the courtesy extended during the telephone interview of June 20, 1989. The substance of the interview appears to be correctly and adequately set forth in the Examiner Interview Summary Record (Paper No. 4).

Claims 48-55 are pending in the application for the Examiner's consideration, claims 1-47 having been cancelled by the present amendment and claims 48-55 having been added. Of the added claims, claims 48, 50, 51, 52, 53, and 54 are independent; claim 49 depends from claim 48 and claim 55 depends from claim 54. Support for the language used in the added claims can be found in the specification and claims as originally filed.

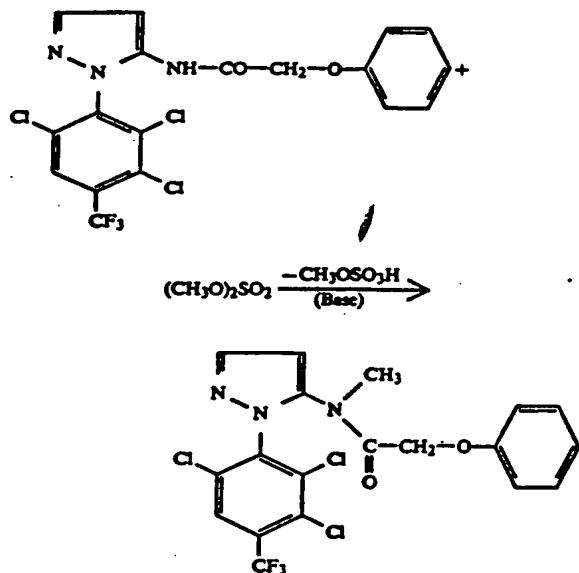
In the outstanding Office Action of May 22, 1989, which was made final, the Examiner rejected all of the pending claims (1-47) as being unpatentable in view of the Fehder patent (U.S. Patent No. 4,728,499) taken separately, or in combination with the Gehring, et al. patent (U.S. Patent No. 4,734,125). As claims 1-47 have been cancelled by the present amendment, it is believed that the rejection of these claims has been rendered moot, and withdrawal of the same is respectfully requested. Similarly, it is requested that the

rejection of claims 23 and 39-47 under 35 U.S.C. §112 also be withdrawn.

New claims 48-55 are all drawn to the phase transport enhancer concept of the present invention. Accordingly, claims 48-55 are similar to rejected claims 7, 8, 15, 19, 28, 31, 44 and 45 ("the rejected claims") which are now cancelled. Therefore, we turn to the rejection of those claims under 35 U.S.C. §103 over Fehder in view of Gehring, et al. In making this rejection, the Examiner has taken the position that the difference between the Fehder patent and the rejected claims is the phase transport enhancer. In the Examiner's opinion, Gehring, et al. teach a phase transport enhancer for the purpose of catalyzing a chemical reaction. Stating that it is commonplace to employ a catalyst to promote a more complete chemical reaction, the Examiner has stated that it would have been obvious to modify Fehder to employ the phase transport enhancer of Gehring, et al. to catalyze a chemical reaction between the indicator material of Fehder and exhaled carbon dioxide.

While it may be true that the use of a catalyst to promote a chemical reaction is known in the art, the combination of the Fehder and Gehring, et al. patents to achieve the present invention is inappropriate for several reasons. First, Gehring, et al. disclose 5-acylamido-1-aryl-pyrazoles, processes for preparation of the same, and their use as a herbicide. In particular, Gehring et al. teach that the following reaction can be carried out in a two phase system, such as, for example,

water/toluene or water/dichloromethane, if appropriate in the presence of a phase transfer catalyst:



See Gehring et al., Column 13 lines 1-25 and Column 19, lines 42-46.

While the invention of Gehring, et al. may be directed to a catalytic reaction, it is clear that there is no teaching in the reference of using a phase transfer catalyst for "enhancing the reaction between a gas, such as  $\text{CO}_2$ , and a dye adsorbed on a solid phase support," as clearly recited in claims 48-55. Applicants submit that there is simply no basis for arguing that Gehring et al. teach or suggest that a phase transport enhancer can catalyze the color change of a dye due to the presence of  $\text{CO}_2$  in the gas phase.

Moreover, one having ordinary skill in this art would not find the Gehring, et al. patent to be

properly combinable with the Fehder patent since the Gehring, et al. patent is directed to a non-analogous art. Certainly, one of ordinary skill in the art of endotracheal tubes and CO<sub>2</sub> indicator therefor, would not look to a patent which teaches methods for preparing herbicides. Therefore, Applicants submit that the Examiner has failed to meet his burden of establishing a prima facie case of obviousness.

Assuming, arguendo, that even if such a combination of the Fehder and Gehring, et al. patents were made, the claimed invention would not result. There is simply no motivation in either document to construct a CO<sub>2</sub> detector including a dye and a phase transport enhancer for enhancing a reaction between a gas such as CO<sub>2</sub> and the dye. This is so because neither the Fehder or Gehring, et al. patents suggest or provide a teaching that a phase transport enhancer enhances the reaction between CO<sub>2</sub> and a dye on a solid phase.

Moreover, as disclosed on page 23 of the application and in the examples, the presence of phase transport enhancer not only enhances the response of the dye to CO<sub>2</sub> gas, but also alters the color and visibility of the dye adsorbed on the solid phase. Such results are truly unexpected and serve to rebut any finding of prima facie obviousness that the examiner may assert.

Thus, for the reasons set forth above it is believed that independent claims 48, 50, 51, 52, 53 and 54 are patentable over the art applied by the

Examiner. Furthermore, for at least the reasons set forth above, dependent claims 49 and 55 are also believed to be patentable.

Should the Examiner find that this Amendment does not place the application in condition for allowance, he is respectfully requested to enter this Amendment as it is believed to place the application in better form for appeal by materially simplifying the issues for consideration on appeal.

It is believed that a full and complete response has been made to the outstanding Office Action, and as such the application is in condition for allowance. If the Examiner feels, for any reason, that a person communication will expedite prosecution of the application, he is invited to telephone the undersigned at the number provided.

Respectfully submitted,

SAIDMAN, STERNE, KESSLER & GOLDSTEIN

*Tracy-Gene Graveline*

Tracy-Gene Graveline  
Agent for Applicants  
Registration No. 32,831

Date: 9/22/89  
A2.TGG.627